RECORD AND BRIEFS

16-1150

No. _____

FILED
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SUPREME COURT, U.S.

In The

Supreme Court of the United States

ELSA HALL,
as personal representative of the
Estate of Ethlyn Louise Hall and as Successor Trustee of
the Ethlyn Louise Hall Family Trust,

Petitioner,

v.

SAMUEL H. HALL, JR. AND HALL & GRIFFITH, PC

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The deadline for filing an appeal has "jurisdictional consequences" and "should above all be clear." *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988). The deadline is measured from the entry of final judgment. 28 U.S.C. § 1291; Fed. R. App. P. 4. Despite the need for clarity, for at least forty-five years the courts of appeals have disagreed as to when their jurisdiction attaches if cases are consolidated and a final judgment is entered in only one of the cases.

The split and lack of clarity have widened with the passage of time—there are four different circuit rules for determining appellate jurisdiction in consolidated cases. This Court has twice set out to resolve the four-way split. The Court granted certiorari in *Erickson v. Maine Central Railroad Co.*, 498 U.S. 807 (1990); but subsequently dismissed the petition. 498 U.S. 1018 (1990) (mem.). The Court again granted certiorari—and partially addressed the split—in *Gelboim v. Bank of Am. Corp.*,135 S.Ct. 897 (2015).

Gelboim held that for cases consolidated in multidistrict litigation, a final judgment in a single case triggers the "appeal-clock" for that case. But, by limiting its holding to multidistrict litigation, *Gelboim* left the split unresolved for cases consolidated in a single district under Fed. R. Civ. P. 42.

The question presented is:

Should the clarity *Gelboim* gave to multidistrict cases be extended to single district consolidated cases, so that the entry of a final judgment in only one case triggers the appeal-clock for that case?

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OPINION BELOW

The Third Circuit Court of Appeals decision appears in the Appendix to this petition at A-1.

JURISDICTION

The Third Circuit filed its decision on February 10, 2017. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the Third Circuit's decision on a writ of certiorari.

STATUTORY PROVISION AT ISSUE

28 U.S.C. § 1291 provides, in relevant part:

> "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States, . . . and the District Court of the Virgin Islands . . . ."

STATEMENT OF THE CASE

In May 2011, Ethlyn Hall ("Mrs. Hall") sued her son, Samuel H. Hall, Jr. ("Samuel") and his law firm, Hall and Griffith, PC, (collectively "Respondents") for conversion, malpractice, fraud and related torts. The primary focus of the lawsuit was approximately one million dollars in rent that Samuel collected on behalf of his mother. Samuel claimed that he had his mother's permission to use a substantial portion of this money to build an expensive vacation rental property on St. John, U.S. Virgin Islands. Mrs. Hall asserted that Samuel had converted the money and demanded it back.

Mrs. Hall sued in her individual capacity and in her capacity as the trustee of her *inter vivos* trust. The case was filed in the District of the Virgin Islands as Case No. 3:11-cv-54 ("11-54").

The progress of the case was delayed by procedural motions and during that delay, Mrs. Hall died. Mrs. Hall's daughter, Elsa Hall ("Elsa"), was appointed the administrator of Mrs. Hall's estate; and, under the terms of Mrs. Hall's trust, became the trust's successor trustee. In January 2013, Elsa (in these representative capacities only) was substituted as the plaintiff via an amendment to the complaint and continued her mother's lawsuit against Respondents. The Respondents answered the amended complaint, and Samuel asserted a counterclaim against Elsa in her representative capacities;[1] however, he alleged conduct (such as exercising undue influence over Mrs. Hall and alienating the relationship between Mrs. Hall and Samuel) that could only have occurred while Mrs. Hall was alive. As Elsa only assumed the representative capacity roles after Mrs. Hall died, she could not have committed these acts in a representative capacity.

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[1] The counterclaim was ostensibly against Elsa in both her representative and individual capacities. But, since Elsa was not a plaintiff in her individual capacity, there was no basis to file a counterclaim against her individually. *See, e.g., Alexander v. Todman*, 361 F.2d 744, 746 (3d Cir. 1966) (holding that a person who sues in an "official or representative capacity is, in contemplation of law, regarded as a person distinct from the same person in his individual capacity and is a stranger to his rights or liabilities as an individual.")

Samuel eventually realized that the claims he wished to assert against Elsa needed to be filed against her in her individual capacity. He initiated a separate lawsuit in the District Court of the Virgin Islands against Elsa individually. (Case No. 3:13-cv-95) ("13-95"). That lawsuit made the same allegations against Elsa in her individual capacity that Samuel had previously made against her in her representative capacities in the counterclaim in 11-54.

Samuel moved, in 13-95, to consolidate that case with 11-54. The basis for the consolidation was the similarity of the allegations in Samuel's counterclaim in 11-54 and the allegations in Samuel's complaint in 13-95. On February 14, 2014, the district court granted the motion. The consolidation order did not specify whether the consolidation was for discovery, for trial, or for all purposes.

As the cases neared trial, Elsa in her representative capacities moved to sever the cases on the grounds that there were few overlapping facts and that there was a substantial likelihood that the jurors would be confused and unable to distinguish between Elsa in her representative capacities and Elsa in her individual capacity. The trial court never ruled on that motion and the cases were tried together. Throughout the litigation, separate counsel represented Elsa in her two separate capacities.

At the start of the trial, the district court concluded that substantial portions of Mrs. Hall's claims (including the conversion claim) did not survive her death and dismissed them *sua sponte*. The jury returned a verdict against Elsa in her representative

capacities on the few remaining claims. The jury also returned a verdict against Elsa in her individual capacity, awarding Samuel $500,000 in compensatory damages and $1.5 million in punitive damages.

On February 4, 2015, the district court entered separate judgments in each case. In 11-54, the judgment specified that "the plaintiff recover nothing [and] the action be dismissed on the merits."

On March 4, 2015, Elsa filed a motion for a new trial in the case against her individually (13-95). On March 5, 2015, Elsa in her representative capacities filed a timely notice of appeal to the United States Court of Appeals for the Third Circuit in 11-54.

Respondents moved to dismiss the appeal, asserting that the final judgment entered in 11-54 was not final because there was not yet a final judgment in 13-95 (due to the pendency of the Fed. R. Civ. P. 59 motion for new trial filed in that case). Initially, the Third Circuit placed the appeal on suspense, waiting to see what transpired with the motion for new trial. A year later, on March 30, 2016, the district court granted the motion for new trial and vacated the verdict against Elsa individually. Although Samuel moved to reconsider the order granting the new trial, the Third Circuit decided to move forward with the appeal in 11-54. The case was fully briefed and the court heard oral argument on December 12, 2016.

On February 10, 2017, the Third Circuit dismissed the appeal for lack of appellate jurisdiction. The motion for reconsideration in 13-95 remains pending, although the new trial is scheduled for April 4, 2017.

REASONS FOR GRANTING THE PETITION

A. The four-way split in the circuits

This case allows the Court to resolve a forty-five year,[2] four-way, circuit conflict involving every court of appeals. Circuit geography should not determine a party's right to appeal from a final judgment entered in a consolidated case. Every single circuit has weighed in on the issue. Indeed, all but one of the circuits (the Eleventh) has remarked on the existence of the split. *See Albert v. Maine Cent. R.R. Co.*, 898 F.2d 5, 7 (1st Cir.) (stating that "[o]ther courts have taken different approaches to this issue"), *cert. granted sub nom, Erickson v. Maine Cent. R.R. Co.*, 498 U.S. 807, *cert. dismissed*, 498 U.S. 1018 (1990) (mem.); *Hageman v. City Investing Co.*, 851 F.2d 69, 71 (2d Cir. 1988) (deciding that although "[s]everal other circuits . . . have come to differing conclusions," it would adopt yet a fourth alternative); *Bergman*, 860 F.2d at 565-66 (confirming the existence of the four-way split); *Eggers v. Clinchfield Coal Co.*, 11 F.3d 35, 39 (4th Cir. 1993) (acknowledging three-way split); *Road Sprinkler*

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[2] One of the earliest cases deciding the appealability of a single final judgment in consolidated cases was *Firestone Tire & Rubber Co. v. General Tire & Rubber Co.*, 431 F.2d 1199 (6th Cir. 1970). The split began to emerge one year later in *Jones v. Den Norske Amerikalinje A/S*, 451 F.2d 985, 986-87 (3d Cir. 1971). Within fourteen years the courts had split in three different directions. *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984) (acknowledging three-way split). It took only four more years for the issue to receive its fourth unique answer. *See Bergman v. City of Atlantic City*, 860 F.2d 560, 565-66 (3d Cir. 1988) (recognizing existence of four-way split).

Fitters Local Union v. Cont'l Sprinkler Co., 967 F.2d 145, 148 (5th Cir. 1992) (remarking that a "divergence of opinion exists"); *In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 589 (6th Cir. 2013) (recounting three-way split); *Sandwiches, Inc. v. Wendy's Intern., Inc.*, 822 F.2d 707, 710 (7th Cir. 1987) (same); *McCuen v. Am. Cas. Co. of Reading, Pennsylvania*, 946 F.2d 1401, 1410 (8th Cir. 1991) (dissenting opinion describing four-way split); *Huene*, 743 F.2d at 704 (acknowledging three-way split); *Trinity Broad. Corp. v. Eller*, 827 F.2d 673, 675 (10th Cir. 1987) ("enunciat[ing] here a new rule for this circuit, in the context of differing rules in other circuits"); *cert. denied*, 487 U.S. 1223 (1988); *United States ex rel. Hampton v. Columbia/HCA Healthcare Corp.*, 318 F.3d 214, 216 (D.C. Cir. 2003) (noting that the issue "has divided the courts of appeals"); *Spraytex, Inc. v. DJS&T*, 96 F.3d 1377, 1380 (Fed. Cir. 1996) (observing that "[o]ur sister circuits have answered this fundamental question in three different ways").

A journey through the circuits demonstrates how the circuit split renders appellate jurisdiction over a final judgment dependant upon the luck of geography. The First and Sixth Circuits would take jurisdiction over Petitioner's appeal. They apply a bright line rule—the dismissal of one of several consolidated cases is immediately appealable as of right. *See FDIC v. Caledonia Inv. Corp.*, 862 F.2d 378 (1st Cir. 1988) (ruling that consolidated "cases retain their separate identity and judgments rendered in each individual action are appealable as final judgments"); *Beil v. Lakewood Eng'g & Mfg. Co.*, 15 F.3d 546, 551 (6th Cir.

1994) (holding that a case disposed of on summary judgment "is appealable pursuant to 28 U.S.C. § 1291 despite the fact that the case with which it is consolidated has not been disposed").

A bright line rule is also applied in the Federal, Ninth, and Tenth Circuits. But, it is the *exact opposite* bright line rule—the dismissal of one of several consolidated cases is not immediately appealable as of right. Thus, in those circuits, the courts of appeal would refuse to accept jurisdiction over the exact same appeal presented to the First and Sixth Circuits. *See Spraytex*, 96 F.3d at 1381 (ruling that "there may be no appeal of a judgment disposing of fewer than all aspects of a consolidated case"); *Trinity*, 827 F.2d at 675 (adopting "the rule that a judgment in a consolidated action that does not dispose of all claims shall not operate as a final, appealable judgment under 28 U.S.C. § 1291"); *Huene*, 743 F.2d at 705 (holding that "the best approach is to permit the appeal only when there is a final judgment that resolves all of the consolidated actions").

The Second Circuit would also decline jurisdiction over Petitioner's appeal; but it would do so based upon a bright-but-fuzzy line rule—there is a near-*per se* presumption that the judgment is not appealable. *Hageman*, 851 F.2d at 71. This presumption may only be overcome in highly unusual circumstances. *Id.* The *Hageman* court deliberately did not adopt a bright line rule; because, it thought it better to "preserv[e] some flexibility," in the light of "the infinite array of consolidated actions that can arise." *Id.* However, the result is that an appellant who assumes that the *per se*

presumption is not overcome and delays filing the notice of appeal until all of the consolidated cases are final risks learning—too late—that the appeal is untimely when the Second Circuit concludes that "unusual circumstances" rendered the judgment final when it was first entered.

The fourth interpretation of "final judgment" was applied in this case. After a two year delay, briefing on the merits, and oral argument, the Third Circuit refused to accept jurisdiction over Petitioner's appeal. Presumably, Petitioner would have suffered a similar fate in the D.C., Fourth, Fifth, Seventh, Eighth, and Eleventh Circuits. But, a litigant cannot be certain whether any of these courts will accept jurisdiction because they eschew a bright line in favor of a fuzzy line approach—if a case is consolidated "for all purposes" then there is a presumption against allowing an appeal of right; if not consolidated for all purposes, the courts apply a case-by-case approach that will likely permit an appeal. *See Hampton*, 318 F.3d at 216 (if actions were not consolidated "for all purposes," an order dismissing one action was an appealable final judgment") *Hall v. Wilkerson*, 926 F.2d 311, 314 (3d Cir. 1991) (the "dispositive" factor is "whether the cases were consolidated for trial or simply for pre-trial administration"); *Watson v. Adams*, No. 15-1706, slip op. at 4-5 (4th Cir. Mar. 25, 2016) (applying the case-by-case approach); *Road Sprinkler Fitters Local*, 967 F.2d at 149 (stating that an appeal is barred only where "consolidation of causes that could have been filed as a single suit existed, and the consolidation was clearly for all purposes" (citation omitted)); *Brown v. United States*, 976 F.2d 1104, 1107 (7th Cir. 1992)

(opining that if "it is clear that cases have been consolidated only for limited purposes, a decision disposing of all the claims in only one of the cases is a final decision subject to immediate appeal"); *Tri-State Hotels, Inc. v. FDIC*, 79 F.3d 707, 711-12 (8th Cir. 1996) (applying a similar rule);*Schippers v. United States*, 715 F.3d 879, 884 (11th Cir. 2013) (allowing an immediate appeal when "the district court did not consolidate the cases 'for all purposes'; rather, the cases were consolidated for pre-trial and discovery purposes").

Gelboim left the question—and the split— open in appeals involving Fed. R. Civ. P. 42. *See Gelboim*, 135 S.Ct. at 904, n.4. But, one concern it noted, "leav[ing] [litigants] in a quandary about the proper timing of their appeals," offered the courts of appeals a reason to reconsider their interpretations of "final judgment" in the context of consolidated cases and perhaps an opportunity to self-correct the circuit split. To date, the courts have not availed themselves of that opportunity. In *McCullough v. World Wrestling Entm't, Inc.*, Nos. 16-1231 and 16-1237, Slip Op. at 9 (2d Cir. Sept. 27, 2016), the Second Circuit declined to revisit its bright-but-fuzzy line rule. The opinion below similarly offered the Third Circuit the opportunity to reevaluate its fuzzy line rule; instead, the court declined to extend *Gelboim* to cases consolidated for all purposes. *Hall v. Hall*, Case No. 15-1564, Slip Op. at 7 n.9 (3d Cir. Feb. 10, 2017).

Regrettably, the split continues.

B. It is important that this Court establish a uniform—and manageable—rule clearly identifying when appellate jurisdiction attaches.

"The time of appealability, having jurisdictional consequences, should above all be clear." *Budinich*, 486 U.S. at 202. The importance of a uniform rule for the application of 28 U.S.C. § 1291 is well-established:

> [W]hat is of importance here is . . . preservation of operational consistency and predictability in the overall application of § 1291. This requires, we think, a uniform rule . . . .

Budinich, 486 U.S. at 202 (1988) (establishing uniform rule that a pending motion for an award of attorney's fees does not prevent a judgment on the merits from being final for purposes of § 1291).

The lack of a clearly articulated rule for an appeal from a final judgment in a consolidated case is untenable. There is no certainty "about the event that triggers the 30-day period for taking an appeal." *Gelboim*, 135 S.Ct. at 900. In the circuits where jurisdiction in such cases is decided on a case-by-case basis, a party with a final judgment *must* file a protective appeal; it cannot afford to await resolution of all consolidated cases before appealing; because, the circuit might then declare, "Sorry, this was one of the cases that should have been filed when the final judgment was entered in the specific proceeding."

In *Gelboim*, as in *Budinich*, this Court vindicated the importance of uniformity and bright line rules that give parties clear notice of the event that triggers the

"appeal-clock." That clarity is likewise needed in the context of appeals involving Fed. R. Civ. P. 42.

CONCLUSION

For the foregoing reasons, this Court should issue a writ of certiorari to the Court of Appeals for the Third Circuit, resolve the four-way split in the circuits, and reverse and remand for further proceedings.

Respectfully submitted,

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15-1564

ELSA HALL, As Personal Representative of the Estate of Ethlyn Louise Hall and as Successor Trustee of the Ethlyn Louise Hall Family Trust,
Appellant

v.

SAMUEL HALL; HALL & GRIFFITH, PC

On Appeal from the District Court
of the Virgin Islands
(D.C. Nos. 3-11-cv-00054 and 3-13-cv-00095)
District Judge: Hon. Curtis V. Gomez

Argued
December 12, 2016

Before: CHAGARES, JORDAN and HARDIMAN,
Circuit Judges.
(Filed: February 10, 2017)

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OPINION*

JORDAN, *Circuit Judge.*

We are asked to intercede in a feud over the inevitable - death and taxes. Ethlyn Hall, an elderly landowner in the Virgin Islands, filed suit against her son when she grew dissatisfied with his actions as her attorney. After Ethlyn passed away, one of her daughters, Elsa Hall, served as personal representative of the estate (the "Estate") and continued to press Ethlyn's claims against Samuel.

Samuel brought claims of his own against Elsa in a separate proceeding. He argued that Elsa had poisoned his relationship with his mother, which caused him serious emotional distress. The Estate's claims and Samuel's claims were consolidated and tried together. A jury rejected the Estate's claims and rendered a two million dollar verdict in Samuel's favor. The District Court entered separate judgments on both aspects of the jury's decision.

Not surprisingly, the Estate has appealed the

* This disposition is not an opinion of the full court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

judgment with respect to its claims. It did not, however, appeal the judgment in favor of Samuel because the District Court granted a post-trial motion vacating the jury verdict. Samuel's claims are still awaiting retrial. He therefore argues that we do not have jurisdiction over this appeal while his claims are still pending in the District Court. We agree and will dismiss the appeal.

I. BACKGROUND[1]

Ethlyn Hall had once been close to her son Samuel, and he had provided many hours of free legal work for her. The two had a falling-out, however, over his efforts to develop one of the parcels of land that she owned on St. John. Ethlyn claimed that Samuel had taken advantage of her trust and the power of attorney she had granted him when he renegotiated a lease and received a large cash payment in connection with the construction of a home she had allegedly agreed to fund for him.

After learning of that transaction, and the associated tax consequences, Ethlyn cut off contact with her son. As her health deteriorated, she moved to Florida to live with Elsa. She altered her trust to designate Elsa as the sole successor trustee and two of her grandchildren as the sole beneficiaries. Ethlyn then filed suit against Samuel, in both her individual

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[1] The facts in this case are hotly contested and complex. Because we conclude that we lack jurisdiction, we focus on the procedural history necessary for understanding that conclusion and only touch on the underlying facts as needed for clarity.

capacity and as trustee of her inter vivos trust.[2]

Ethlyn's claims were in suspense for some time pending the resolution of an ultimately unsuccessful motion to dismiss in the District Court. Before that motion was resolved, Ethlyn died and Elsa took over as the personal representative of the Estate and the trust's sole trustee. Samuel then filed a separate suit against her in her individual capacity. He argued that she had harmed him by turning his mother against him, surreptitiously taking Ethlyn away from the Virgin Islands without informing other family members, and keeping her hidden from loved ones until her death.[3]

Samuel's claims against Elsa were consolidated for all purposes with the Estate's claims against him.[4] The

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[2] The Amended Complaint alleged that Samuel had 1) breached his fiduciary duties as Ethlyn's attorney; 2) breached his fiduciary duties by abusing his power of attorney; 3) committed legal malpractice; 4) improperly converted Ethlyn's property for his own benefit; 5) refused to return to Ethlyn her legal files (conversion); 6) committed fraud by deceiving Ethlyn about the lease renegotiation; and 7) been unjustly enriched through the proceeds of the lease renegotiation. Ethlyn also demanded an accounting, a constructive trust, and an equitable lien on Samuel's property.

[3] His legal claims included intentional infliction of emotional distress, undue influence, breach of fiduciary duty, fraud, tortious interference, and conversion.

[4] When the cases were first consolidated, Samuel had counterclaims and third party claims in the Estate's suit that substantially overlapped with the claims in his separate proceeding against Elsa. Those claims were dismissed before the

Estate moved to sever, arguing that consolidation would confuse the jury and be prejudicial to the Estate,[5] but the District Court did not respond to the motion to sever or explain its decision to try the claims together.

Most of the claims brought by both parties were dismissed before trial on a variety of grounds. As a result, the only claims that went to the jury were the Estate's fraud, unjust enrichment, and breach of fiduciary duty claims, and Samuel's intentional infliction of emotional distress claim. The jury rejected all of the Estate's claims. It also found Elsa liable for intentional infliction of emotional distress and awarded Samuel $500,000 in compensatory damages and $1,500,000 in punitive damages. The District Court entered separate judgments on the two sets of claims, and the Estate immediately filed this appeal concerning its claims against Samuel.

With regard to Samuel's claims, Elsa filed a motion for a directed verdict or, in the alternative, a new trial. The Court concluded that the jury might have relied on a legally untenable basis for finding intentional infliction of emotional distress, so it ordered a new trial. Samuel filed a motion for reconsideration, which remains pending. He asked the District Court to either allow for additional arguments or to certify the

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case went before the jury.

[5] Samuel opposed the motion to sever by pointing out that the claims had been consolidated for over a year without complaint and arguing that there were common witnesses and issues.

determinative legal question to the Virgin Islands Supreme Court.

We stayed review of the Estate's appeal pending the resolution of Elsa's post-trial motions. That stay was automatically lifted once the District Court ordered a new trial, and we declined to further stay the appeal pending the resolution of Samuel's motion for reconsideration.

II. JURISDICTION[6]

Samuel has filed a motion to dismiss this appeal on jurisdictional grounds.[7] He claims that we lack jurisdiction since there are outstanding motions before the District Court concerning his claims against Elsa. The Estate responds that, because the District Court entered separate final judgments, the two cases should no longer be seen as consolidated for purposes of appeal. We think Samuel has the better of this particular argument.

The case is in an unusual procedural posture. The Clerk of the District Court entered what is styled as a final judgment with regard to the Estate's claims, and ordinarily such a judgment would, of course, be

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[6] The District Court had diversity jurisdiction under 28 U.S.C. § 1332. For the reasons set forth herein, we lack jurisdiction.

[7] Samuel also filed a motion to strike the Estate's brief and appendix. Because we are dismissing for lack of jurisdiction, we do not consider that motion.

appealable.[8] The problem is that Samuel's claims against Elsa remain outstanding, and the District Court never entered an order severing the cases, nor did the Estate obtain a Rule 54(b) certification and determination that there was no just reason for delay. *See Elliott v. Archdiocese of N.Y.*, 682 F.3d 213, 229 (3d Cir. 2012) (discussing the requirements for Rule 54(b) certification).

When two cases have been consolidated for all purposes, a final decision on one set of claims is generally not appealable while the second set remains pending. *Bergman v. City of Atl. City*, 860 F.2d 560, 563 (3d Cir. 1988); *see also Morton Int'l, Inc. v. A.E. Staley Mfg. Co.*, 460 F.3d 470, 476 (3d Cir. 2006) (noting that appeal is generally not available from an order terminating fewer than all claims against all parties). However, we do not employ a bright line rule and instead consider on a case-by-case basis whether a less-than-complete judgment is appealable. *Bergman*, 860 F.2d at 566. To make that determination, we consider "the overlap among the claims, the relationship of the various parties, and the likelihood of the claims being tried together." *United States. v. $8,221,877.16 in U.S. Currency*, 330 F.3d 141, 146 (3d.

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[8] The only pending motion involving the Estate's claim concerns attorney's fees, and that would not typically bar us from hearing an appeal, *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202-03 (1988), nor would the fact that the District Court did not issue an explanation for some of its rulings. See 3d Cir. L.A.R. 3.1 (2011) (allowing, but not requiring, the trial judge to provide a written opinion or amplification up to 30 days after the docketing of a notice of appeal).

Cir. 2003); *see also Bergman*, 860 F.2d at 566; *Hall v. Wilkerson*, 926 F.2d 311, 314 (3d Cir. 1991). Considering those factors, as well as the underlying question of whether "justice would be best served and judicial economy not compromised if separate appeals were permitted," *Bergman*, 860 F.2d at 566, we conclude that the Estate's appeal is not properly before us at this time.

Both parties' claims have already been heard together. Our cases allowing for separate appeals have typically involved claims that either were not consolidated for trial, *Hall*, 926 F.2d at 314; *Bogosian v Gulf Oil Corp.*, 561 F.2d 434, 441 (3d Cir. 1977), or had been consolidated for trial but had not yet been tried. *Bergman*, 860 F.2d at 566; *$8,221,877.16 in U.S. Currency*, 330 F.3d at 146. By contrast, here, all of the claims were in fact scheduled together and tried before a single jury. That counsels in favor of keeping the claims together on appeal.[9]

Moreover, the trial record illustrates some overlap of evidence among the claims. Witnesses such as Samuel and Elsa would inevitably testify in a suit involving either set of claims, and both sets of claims may turn on how Ethlyn reacted to learning about Samuel's lease renegotiation and who or what was influencing her thinking at the time. Considering that

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[9] The Estate wants us to analogize to a recent Supreme Court decision affirming the appealability of final judgment in a case that was part of a multi-district litigation. *Gelboim v. Bank of Am. Corp.*, __ U.S. __, 135 S. Ct. 897, 905-06 (2015). But *Gelboim* is inapplicable because, with an MDL, consolidation is only for pretrial matters. 28 U.S.C. § 1407.

the District Court decided that justice and judicial economy were best served by consolidation in the first place, we will not second guess that judgment now by allowing piecemeal appeals.[10] There will also likely be overlapping issues on appeal once Samuel's claims become appealable, so waiting seems the better course.[11]

III. CONCLUSION

For the foregoing reasons, we will dismiss the Estate's appeal for lack of jurisdiction.

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[10] Because we lack jurisdiction, we do not consider the Estate's claim that due to the consolidation, it was prejudiced in presenting its case to the jury. Our opinion here does not foreclose a subsequent challenge on that point.

[11] In addition, we note that the Estate could have sought Rule 54(b) certification and yet chose not to do so. Indeed, at oral argument, the Estate's counsel conceded that nothing prevented him from seeking a Rule 54(b) motion even as the appeal was pending before us. The Rules of Civil Procedure provide that mechanism to certify appeals when finality is either lacking or in doubt.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15-1564

ELSA HALL, As Personal Representative of the Estate of Ethlyn Louise Hall and as Successor Trustee of the Ethlyn Louise Hall Family Trust,
Appellant

v.

SAMUEL HALL; HALL & GRIFFITH, PC

On Appeal from the District Court of the Virgin Islands
(D.C. Nos. 3-11-cv-00054 and 3-13-cv-00095)
District Judge: Hon. Curtis V. Gomez

Argued
December 12, 2016

Before: CHAGARES, JORDAN and HARDIMAN,
Circuit Judges.

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Virgin Islands and was argued on December 12, 2016.

On consideration whereof, it is now ORDERED and

ADJUDGED by this Court that Elsa Hall's appeal is dismissed for jack of jurisdiction. All of the above in accordance with the opinion of this Court. The parties are to bear their own costs.

ATTESTED:

s/ Marcia M. Waldron
Clerk

Date: February 10, 2017

UNITED STATES DISTRICT COURT
for the District of the Virgin Islands

ELSA HALL, in her representative capacity *Plaintiff*	)	
v.	)	Civil Action No. 3:11-cv-00054
SAMUEL H. HALL, JR. AND HALL & GRIFFITH, P.C., *Defendant*	)	

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($_____) which includes prejudgment interest at the rate of ___ plus post judgment interest at the rate of ___% per annum, along with costs.

☑ the plaintiff recover nothing, the action be dismissed on the merits.

☐ other: _____

This action was *(check one)*:

☑ tried by a jury with Judge Curtis V. Gómez, District Judge presiding, and the jury has rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision was reached.

☐ decided by Judge _____ on a motion for _____.

Date: February 4, 2015

GLENDA LAKE, ESQUIRE
CLERK OF COURT

/s
signature of Clerk or Deputy Clerk

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

SAMUEL H. HALL, JR., Plaintiff, v. ELSA HALL, Defendant.	Civil No. 2013-95
ELSA HALL, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ETHLYN LOUISE HALL, AND AS SUCCESSOR TRUSTEE OF THE ETHLYN LOUISE HALL FAMILY TRUST, Plaintiff, v. SAMUEL H. HALL, JR. AND HALL & GRIFFITH, P.C., Defendants.	Civil No. 2011-54

ORDER

Before the Court is plaintiff Samuel Hall's motion to consolidate this matter with Civil Number 11-54, captioned *Elsa Hall, as Personal Representative of the Estate of Ethlyn Louise Hall and as Successor Trustee of the Ethlyn Louise Hall Family Trust v. Samuel H. Hall, Jr., et al.* [DE 11]. Defendant opposes the motion. [DE 15]. The premises considered, it is hereby ORDERED:

1. The motion to consolidate is GRANTED.
2. The following cases shall be consolidated: 3:11-cv-54 and 3:13-cv-95.
3. All submissions in the consolidated case shall be filed in case number 3:11-cv-54.

Dated: February 14, 2014

S_____

RUTH MILLER
United States Magistrate Judge